

SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT

THIS SECOND AMENDMENT TO ASSET PURCHASE AGREEMENT ("Amendment") is made and entered into as of the 25th day of March, 2021, by and between OLD NORTH STATE WATER COMPANY, LLC, a North Carolina limited liability company ("ONS" or "Seller"), and PLURIS HAMPSTEAD, LLC, a North Carolina limited liability company ("Pluris" or "Buyer").

WITNESSETH:

WHEREAS, on September 11, 2020, ONS and Pluris entered into an Asset Purchase Agreement (the "APA") for the purchase of utility assets that consist generally of certain wastewater collection facilities and systems (the "Purchased Assets") serving or to serve the Southside Commons (f/k/a Grey Bull), Salters Haven at Lea Marina, Majestic Oaks, and Majestic Oaks West residential developments (collectively "the Service Area"), and utility franchises relating thereto. All capitalized terms used in this Amendment that are not otherwise defined herein shall have the meanings assigned to such terms in the APA.

WHEREAS, ONS and Pluris thereafter filed an application with the NCUC requesting that it approve the transfer of the Purchased Assets and the utility franchises relating to the Properties to Buyer.

WHEREAS, pursuant to the APA and subject to approval by the NCUC, Pluris is to acquire the Purchased Assets as such are more particularly described in the APA, all of which are owned or will be acquired by ONS prior to Closing, and are or will be used to provide sewer service to the Properties in the Service Area. ONS will also convey other assets to Pluris, including easements and fee simple title to the 50' x 50' Lift Station Tract for construction of a lift station (the "Lift Station"), all as more fully described and detailed in the APA.

WHEREAS, the APA provides that ONS will retain ownership of the existing wastewater treatment plant located in the Majestic Oaks development (the "WWTP"), and will provide transitional services to Pluris up through and including the Interim Period for at least 150 days after Closing while Pluris constructs the Lift Station and facilities necessary to connect the collection systems in the Service Area to the Force Main (the "Interconnection") in order to treat wastewater from the Properties at Pluris's membrane bio-reactor treatment plant in Hampstead (the "Hampstead Plant").

WHEREAS, due to potential regulatory compliance issues with the WWTP, ONS desires that Pluris proceed with construction of the Lift Station and establishment of the Interconnection prior to Closing so that Pluris can provide bulk wastewater treatment service to ONS whereby Pluris will receive and treat all wastewater from the Properties at the Hampstead Plant.

WHEREAS, on or about March 4, 2021 ONS and Pluris entered into a First Amendment to the APA, to provide the arrangements under which Pluris would provide bulk wastewater treatment service to ONS, until such time as the NCUC approves the transfer of the Purchased

Assets and utility franchises relating to the Properties to Buyer and the Closing occurs, and to address responsibility for the cost of certain facilities to be constructed by Pluris.

WHEREAS, the Public Staff raised a concern regarding the potential ambiguity of one aspect of the language in the First Amendment, and ONS and Pluris now desire to address that concern and to amend the APA as provided for herein, to set forth the arrangements under which Pluris would provide bulk wastewater treatment service to ONS, until such time as the NCUC approves the transfer of the Purchased Assets and utility franchises relating to the Properties to Buyer and the Closing occurs, and to address responsibility for the cost of certain facilities to be constructed by Pluris.

NOW, THEREFORE, for and in consideration of the mutual covenants, conditions, representations and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Buyer and Seller hereby agree as follows:

1. Recitals. The foregoing Recitals are hereby incorporated as agreements of the parties hereto.

2. Amendments.

2.1 The APA is amended by adding a new Section 2.07:

SECTION 2.07 PROVISION OF BULK TREATMENT SERVICE BY BUYER.

(A) Subject to the obligations of ONS under Section 2.06 of the APA, Pluris agrees to proceed with construction of the Lift Station and other facilities as necessary to establish the Interconnection, on the following terms and conditions:

1. Pluris, on behalf of and in the name of ONS, will proceed promptly with efforts to secure all Governmental Authorizations necessary for construction of the Lift Station and the Interconnection. ONS will provide Pluris with all easements necessary for construction and operation of the Lift Station, which easements shall be satisfactory to Pluris' counsel.
2. Upon securing all necessary Governmental Authorizations, Pluris will construct the Lift Station on the Lift Station Tract, even though title to that tract will not be conveyed to Pluris unless and until the parties reach Closing.
3. Within ten (10) business days following the later of (i) completion of construction of the Lift Station, (ii) connection of the Lift Station to ONS's collection systems and facilities serving the Properties (collectively "Collection Systems"), and (iii) completion of the Interconnection, Pluris will receive and treat all wastewater from the Properties and provide bulk wastewater treatment service to ONS (the "Commencement Date").
4. Pluris shall provide such bulk wastewater treatment service to ONS from the Commencement Date until the earlier of the date of Closing or the Termination Date, as that term is defined below.

5. As compensation to Pluris for providing bulk wastewater treatment service as provided for in this Amendment, subject to NCUC approval, ONS shall pay Pluris a Bulk Service Fee in an amount equal to ONS's NCUC-approved service charges to its customers at the Properties, calculated based on the total number of ONS customers at the Properties at the rate of \$56.40 for each and every residential customer, \$56.40 per Residential Equivalent Unit ("REU") for nonresidential customers, and \$789.40 for the Hampstead Shopping Center, per month, from and including the Commencement Date, up to the earlier of the date of Closing or the Termination Date, as that term is defined below. The day of the Commencement Date within the month shall serve as the subsequent billing date on which the next single monthly payment is due. Pluris will bill in advance, meaning the first payment is due on the Commencement Date and every month thereafter on that date until the date of Closing or the Termination Date. For the last monthly period billed by Pluris to ONS, Pluris will prorate the amount due for that monthly period for the number of days in the monthly period for which Pluris provides bulk wastewater treatment service to ONS, and reimburse the required amount of the Bulk Service Fee to ONS.

The Bulk Service Fee shall change each month as ONS adds additional customers to its system. ONS shall notify Pluris as of the date of each monthly billing as to the total number of residential, nonresidential and commercial customers it is serving.

6. Pluris shall have no dealings with or obligation to deal with ONS's customers at the Properties regarding any customer service issue at any time during the period when Pluris is providing bulk treatment service to ONS.
 7. ONS shall maintain the Collection Systems in compliance with all applicable regulatory and environmental regulations and requirements. Pluris shall have no obligation or responsibility for improving, maintaining, or operating the Collection Systems, and shall have no obligation to maintain or achieve compliance with any applicable governmental and/or regulatory regulations or requirements relating to the Collection Systems, or the requirements of any Governmental Body relating thereto. Pluris shall not be responsible for the wastewater from the Properties until it is delivered to the Lift Station by ONS.
 8. If the NCUC approves the arrangements for Pluris' provision of the bulk wastewater treatment service and the Bulk Service Fee as provided for in this Section 2.07, then ONS will not be required to provide the Transitional Service Arrangement or the Services described in Section 2.06.
- (B) In the event the NCUC does not approve the transfer of the Purchased Assets and the utility franchises relating to the Properties to Pluris, then:
1. (a) This Agreement shall terminate on the date sixty (60) days after the date of such a ruling by the NCUC (the "Termination Date"); and
 - (b) On or before the Termination Date, ONS shall fully reimburse Pluris for all documented costs incurred by Pluris for planning, permitting and constructing the Lift Station and Interconnection;

and

2. ONS shall choose one of the following options for provision of service to the Properties by ONS on a going forward basis:

- (a) On or before the Termination Date, ONS will resume operation of its WWTP, will cease sending wastewater to the Lift Station for treatment by Pluris, and shall disconnect the Collection Systems from the Lift Station; or
- (b) On or before the Termination Date, ONS shall elect to continue receiving bulk treatment service from Pluris on terms and conditions to be agreed upon by the parties and approved by the NCUC.

(C)

1. ONS's use of the bulk treatment service shall be at its sole risk, and Pluris shall have no responsibility whatsoever for, and ONS does hereby expressly waive, release, and agree to hold Pluris harmless from any loss, injury, or damage to person or to property suffered by ONS or its customers, agents, employees, invitees, or guests in, on, or about the Properties, except to the extent caused by the gross negligence or willful misconduct of Pluris.

Pluris shall hold ONS harmless from any liability or damages which may arise from Pluris' negligent operations pursuant to this Amendment.

ONS shall hold Pluris harmless from any liability or damages which may arise from all causes of any kind other than Pluris' negligence.

Pluris' liability to ONS under this Amendment excludes all indirect, consequential or punitive damages or claims for such.

2. ONS shall pay all franchise, property or other normal taxes associated with its operations at the Properties, and all regulatory fees due the NCUC until the date of Closing.
3. Except as specifically amended herein, the terms of the APA remain in full force and effect.

IN WITNESS WHEREOF, the Seller and Buyer have caused this Amendment to be duly executed and entered into on the date first above written.

SELLER:

Old North State Water Company, LLC

By: 

Title: manager

BUYER:

Pluris Hampstead, LLC

By: 

Title: MANAGER

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Apr 01 2021